

CLAIM AMENDMENTS

Please cancel claim 9 without prejudice and amend claims 1, 7, 10, 11, 13 and 14 as follows:

1. (currently amended) A sun shielding device to protect the head and neck of the user from the sun when lying prone on a relatively flat surface comprising: (a) a structural frame having a base support beam and two sides, wherein said two sides comprise a top support beam and a lower support beam, said top support beam and said lower support beam joined together at their ends by an adjustable angle hinge wherein said sides are affixed to one another by said base support beam such that said sides are positioned parallel to each other and about 90 degrees to said base support beam and wherein said top support beams may be adjusted independently of one another and ~~or~~ said lower support beams may be adjusted independently of one another and (b) a cover means affixed between said top support beams, between said lower support beams and netting affixed between said top support beam and said lower support beam of each of said sides.
2. (original) The sun shielding device according to claim 1 wherein said sides are V-shaped.
3. (cancelled)
4. (cancelled)
5. (original) The sun shielding device according to claim 1 wherein said cover means is a flexible, minimum-light penetration material.
6. (cancelled)
7. (currently amended) The sun shielding device according to claim 1 wherein said base support beam further comprises an anchor means to prevent said sun shield from moving after being positioned in place.

8. (cancelled)
9. (cancelled)
10. (currently amended) The sun shielding device according to claim 7 wherein said anchor means is at least one stake extending from the base support beam for driving into said relatively flat surface to position said sun shielding device in place for use.
11. (currently amended) The sun shielding device according to claim 10 wherein said at least one stake is retractably affixed to said base support beam so that when retracted said stake fits flush against said base support beam.
12. (original)The sun shielding device according to claim 1 further comprising a head and neck rest.
13. (currently amended) The sun shielding device according to claim 12 wherein said head and neck rest is removably affixed to said sun shielding device.
14. (currently amended) The sun shielding device according to claim 12 wherein said head and neck rest is inflatable.

PATENTABILITY ARGUMENTS

Response to 35 U.S.C. §103 (a) Rejections

The Examiner has rejected claims 1, 2, 5, 7 and 9-14 under 35 USC §103(a) as being unpatentable over Peery (U.S. patent 2,543,597) in view of Kranzler (U.S. patent 5,752,537). For the Examiner to maintain a rejection under 35 U.S.C. §103(a) the Examiner must show that there was some suggestion or motivation to combine the references cited, that there would have been a reasonable expectation of success in combining the teachings of the cited references and that the proposed combination of cited references teach all of the claimed limitations of Applicant's invention.

The Examiner states that:

"Peery provides a sun shielding device comprising a structural frame having a base support beam 6, and two sides 20. Each of the two sides 20 comprise a top support beam 7 and a lower support beam 8 and/or 9. The top support beam 7 and lower support beams 8/9 are joined together at their ends by an adjustable angle hinge 11. Sides 20 are affixed to one another by base support beam 6 such that the sides are positioned parallel to each other and about 90 degrees to the base support beam 6. The top support beams 7 and the lower support beams 8/9 may be adjusted independently of one another. A cover means is affixed to the support frame between the top support beams and between the lower support beams as well as between the top support beams and the lower support beams at 20. The sides are V-shaped. Waterproof canvas is disclosed as a material for the cover. This meets the limitations of claim 5. Anchor means/stake 14 are provided. Head and neck rest or pillow 29 is provided.

Peery fails to provides is that the side covering means is provided as netting.

Kranzler teaches at column 6, lines 51+, that it was known at the time of the invention that the side covers of sunshade/shelter may be made of canvas or netting... The pillow 29 could be removed by taking out the stitching fastening it. Alternatively. Hook and loop type fasteners would have been an obvious equivalent fastening means to the stitching to one of ordinary skill in the art at the time of the invention."

Applicant respectfully disagrees. The device taught by Perry is a canopy made of three distinct U-shaped bows wherein the free ends of the U-shaped bows are connected for pivotal movement (column 3 lines 38 through 46). Because of the U-shaped bow construction it is impossible to adjust one arm of a single U-shaped bow independently from the other. Applicant's invention does not teach, claim, disclose or describe U-shaped bow elements. Applicants top support beams are independent of one another

and are generally linear (page 6 line 22 through 26). They are pivotally connected on one end to a lower support beam wherein the lower support beam is generally linear (page 11 lines 10 through 12). In this novel construction the top support beams may be adjusted independently from one another allowing the user to reconfigure the sun shield to optimize protection from the sun.

In response to the Examiner's previous rejections Applicant amended her claims to more clearly specify that the top support beams and the lower support beams may be adjusted independently. These amendments successfully traversed the rejections and were entered into the record. In his final Office action the Examiner cited two new references teaching devices wherein the top support beams cannot be adjusted independently. In a telephonic interview with the Examiner it became clear that his interpretation of the claim language did not make this distinction. Therefore, Applicant has amended claim 1 to include additional language that restates and reiterates that the top support beams and the lower support beams may be adjusted independently from one another, which includes adjusting the top support beams independently, the lower support beams independently and the top and lower support beams independently. Consequently, the Examiner's rejection based on Peery fails to teach or disclose a device wherein the user is able to adjust the top support beams independently of one another and lower support beams independently of each other. Absent this, the proposed combination of Peery and Kranzler does not teach all of the claim limitations of Applicant's invention. Correspondingly one skilled in the art would not be motivated to combine the cited references or have a reasonable expectation of success when combining the references since the combination would not result in Applicant's invention. Consequently, the Examiner's argument does not support a rejection of claims 1, 2, 5, 7 and 9-14 based 35 USC §103(a). Therefore, Applicant respectfully requests that the Examiner remove this rejection.